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RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—PROPERTY SUBJECT TO—HIGHWAYS.—The defendant for more than fifteen years maintained fences, cattle sheds and other obstructions in and across a public highway; an action was brought to enjoin these obstructions to travel. *Held*, lapse of time will not bar the remedies of the state against encroachments upon a highway; a private individual cannot obtain title to a public highway by adverse possession. *Eble v. State, ex rel. Leavenworth County Attorney* (1908), — Kan. —, 93 Pac. Rep. 803.

The authorities on the question presented in the principal case are not in harmony. The earlier decisions in many states allowed title in the property of municipalities and other territorial subdivisions to be acquired by adverse possession, arguing that the local authorities must prevent all encroachments and that the maxim, "lapse of time does not bar the right of the crown," applies to the sovereign alone. A few courts still maintain this theory; *Cady v. Fitzsimmons*, 50 Conn. 209; *Terrill v. Bloomfield*, (Ky.) 21 S. W. 1041; *Darrow v. Houser*, 122 Mich. 229, 81 N. W. 262; *City of Hastings v. Gillitt*, 85 Minn. 331, 88 N. W. 987; *Knight v. Heaton*, 22 Vt. 480. The great weight of authority, however, as well as the better reason, is in accord with the holding in the principal case; the maxim quoted above applies as well to governmental agencies in the exercise of a delegated sovereign power as to the sovereign itself. Any interference with a public easement constitutes a public nuisance, and it may be abated by the authorities at any time; *Ralston v. Weston*, 46 Va. 544, 33 S. E. 326, 76 Am. St. Rep. 834; *Oakland v. O. W. F. Co.*, 118 Cal. 160, 50 Pac. 277; *De Kalb v. Luney*, 193 Ill. 185, 61 N. E. 1036; *Railroad Co. v. County Comm'rs*, 31 O. S. 338; *Driggs v. Phillips*, 103 N. Y. 77, 8 N. E. 514; *Price v. Plainfield*, 40 N. J. L. 608; Note to *Railway Co. v. Ely*, 87 Am. St. Rep. 775. But adverse possession may bar the title of an owner of the fee in land over which the public has an easement; *Read v. Leeds*, 19 Conn. 182; *Woodruff v. Paddock*, 130 N. Y. 618, 29 N. E. 1021. There is a recent tendency to distinguish between property held by a municipality in its private capacity and that held in its strictly public capacity; as to the former class, the municipality is subject to the limitation laws; *Ames v. San Diego*, 101 Cal. 390, 35 Pac. 1005; *Bedford v. Willard*, 133 Ind. 562, 33 N. E. 368; *Hammond v. Shepard*, 186 Ill. 235, 57 N. E. 867, 78 Am. St. Rep. 274.

AGENCY—BROKERS—COMMISSIONS—WHEN EARNED. — Plaintiff procured for defendant a purchaser for a traction engine and corn shredder. The buyer wished to apply a village lot upon the purchase price. Defendant refused to take the lot, the sale was not completed, and the property was not delivered. Plaintiff sues for commissions. *Held*, that he could not recover. *Sterling v. Aultman Engine & Thresher Co.* (1908), — Mich. —, 114 W. W. Rep. 1011.

In reversing the decision of the lower court and holding that it should have directed a verdict for the defendant the court has followed the weight